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10 First National Insurance Company of America

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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**  
**SACRAMENTO**

FIRST NATIONAL INSURANCE ) CASE NO.: CIV.S-04-0836 GEB JFM -P  
COMPANY OF AMERICA, a Washington )  
corporation, )  
Plaintiff, ) **STIPULATION AND**  
vs. ) **(PROPOSED) JUDGMENT**  
MBA CONSTRUCTION, a California )  
corporation doing business as MACK )  
CONSTRUCTION; KEVIN D. MACK, an )  
individual; KATIE BAUGH, an individual; )  
DANNY W. BAUGH, an individual; and )  
DOES 1 through 25, )  
Defendants. )

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The parties to this action, plaintiff FIRST NATIONAL INSURANCE COMPANY OF AMERICA ("Plaintiff") and defendants MBA CONSTRUCTION, MACK CONSTRUCTION, KEVIN D. MACK, KATIE BAUGH AND DANNY W. BAUGH (collectively "Defendants") agree to the following STIPULATION AND PROPOSED JUDGMENT, with reference to the following facts:

A. Defendants, on September 2, 2005, made an Offer of Judgment, pursuant to Federal Rule of Civil Procedure 68, which Offer of Judgment stated, "Defendants, MBA Construction dba Mack

1 Construction, Kevin Mack, Katie Baugh, and Danny Baugh hereby offer to allow judgment to be taken  
2 against them, joint and severally, the amount of \$102,966.00 with recoverable interest, costs and  
3 attorney's fees pursuant to Rule 68 of the Federal Rules of Civil Procedure. This Offer of Judgment  
4 includes and will satisfy the court order for Defendants to collateralize Plaintiff in the amount of  
5 \$77,728."

6       B. It is plaintiff's intent to accept this Offer of Judgment, provided that Plaintiff and  
7 Defendants clarify their mutual understanding of its terms. For this purpose, Plaintiff and Defendants  
8 stipulate, through their respective attorneys of record, that:

9       1. Judgment shall be entered in favor of First National Insurance Company against  
10 Defendants MBA Construction dba Mack Construction, Kevin Mack, Katie Baugh and Danny Baugh,  
11 joint and severally, in the amount of \$102,966.00, exclusive of any recoverable interest, costs or  
12 attorneys' fees;

13       2. Plaintiff's claims for interest, costs and attorneys' fees shall each be submitted to the Court  
14 pursuant to Local Rules 52-292, 52-293, or as otherwise Ordered by the Court;

15       3. The submission of this Stipulation and Proposed Judgment waives neither Plaintiff's claims  
16 for interest, costs, and/or attorneys' fees, nor Defendants' defenses to said claims for interest, costs and/or  
17 attorneys' fees;

18       4. The Court shall rule on the recoverability of Plaintiff's claims for interest, costs and  
19 attorneys' fees pursuant to applicable law, and issue an additional judgment if, and to the extent, the Court  
20 finds interest, costs and/or attorneys' fees are recoverable; and

21       5. The Judgment of the Court, pursuant to this Stipulation and Proposed Order, satisfies the  
22 Court's Order of August 12, 2005 for the Defendant's to collateralize Plaintiff in the amount of \$77,728.

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1 Dated: \_\_\_\_\_

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25 Attorneys for Defendants MBA CONSTRUCTION dba MACK  
26 CONSTRUCTION, KEVIN D. MACK, KATIE BAUGH, and  
27 DANNY W. BAUGH

28 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. Judgment is hereby entered in favor of First National Insurance Company against  
2 Defendants MBA Construction dba Mack Construction, Kevin Mack, Katie Baugh and Danny Baugh,  
3 joint and severally, in the amount of \$102,966.00, exclusive of any recoverable interest, costs or  
4 attorneys' fees;

5. Plaintiff's claim for interest, costs and attorneys' fees shall each be submitted to the Court  
6 pursuant to Local Rules 52-292, 52-293, or as otherwise Ordered by the Court;

7. This Judgment waives neither Plaintiff's claims for interest, costs, attorneys' fees, nor any  
8 of Defendants' defenses to said claims;

9. The Court shall rule on Plaintiff's claims for interest, costs and/or attorneys' fees pursuant  
10 to applicable law, and issue an additional judgment if, and to the extent, the Court finds interest, costs  
11 and/or attorneys' fees are recoverable; and

1       5. This Judgment satisfies the Court's Order of August 11, 2005 for the Defendants to  
2 collateralize Plaintiff in the amount of \$77,728.

3       IT IS SO ORDERED.

4       DATED: September 8, 2005

/s/ Garland E. Burrell, Jr.

GARLAND E. BURRELL, JR.

United States District Judge